

ENTERED

March 09, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

MARCOS DE PAYAN, <i>et al.</i> ,	§
	§
Plaintiffs,	§
	§
VS.	§ CIVIL ACTION NO. 1:22-CV-00145
	§
BROWNSVILLE COMMUNITY	§
HEALTH CLINIC CORP.,	§
	§
Defendant.	§

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Before the Court is the “Magistrate Judge’s Report and Recommendation” (“R&R”) (Dkt. No. 7). The R&R recommends the Court grant the United States of America’s (“Government”) “Notice of Substitution” (“Notice”) (Dkt. No. 3) and grant the Government’s Motion to Dismiss (“MTD”) (Dkt. No. 4) for lack of subject matter jurisdiction. Dkt. No. 7.

Plaintiffs timely filed their “Notice of Plaintiffs’ Objections to Magistrate’s Proposed Findings, Conclusions, and Recommendation and Motion to Abate and Keep This Case Open Until the Conclusion of the Administrative Branch’s Review of the Case” (“Motion to Abate”) (Dkt. No. 8). Plaintiffs do not object to replacing Brownsville Community Health Clinic Corp. (“BCHCC”) with the Government as the proper defendant. Dkt. No. 8. But rather than dismissing the case, Plaintiffs request an abatement until the United States Department of Health and Human Services (“DHHS”) resolves their administrative claim. *Id.* at 3-4. If DHHS denies their claim, Plaintiffs believe the Court will have jurisdiction under 28 U.S.C. § 2401(b). *Id.*

After reviewing the record, the R&R is **ADOPTED**. The Government’s Notice (Dkt. No. 3) and MTD (Dkt. No. 4) are **GRANTED**. The Clerk of the Court is **ORDERED** to close this case.

I. GOVERNMENT’S SUBSTITUTION FOR BCHCC

If no party objects to the magistrate’s ruling, the appropriate standard of review is “clearly erroneous, abuse of discretion and contrary to law.” *United States v. Wilson*, 864 F.2d 1219, 1221

(5th Cir. 1989). Finding no clear error, abuse of discretion, or finding contrary to law, the R&R is **ADOPTED** as to the Government's Notice of Substitution (Dkt. No. 3).

II. PLAINTIFF'S REQUEST FOR ABATEMENT

If a party objects to a magistrate's rulings, the district court will review de novo. *Wilson*, 864 F.2d at 1221.

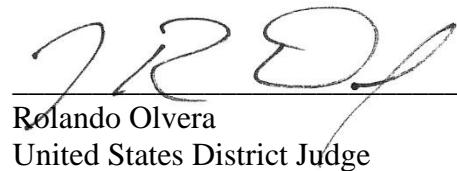
Under 28 U.S.C. § 2401(b), a claimant must file their claim "with the appropriate agency within two years after the claim accrues." *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, 646 F.3d 185, 189 (5th Cir. 2011). If the administrative agency denies her claim, the claimant then has six months to file a lawsuit. *Id.* The claimant must meet both filing deadlines. *Id. See also Schuler v. United States*, 628 F.2d 199, 201 (D.C. Cir. 1980) ("[28 U.S.C. § 2401(b)] requires the claimant both to file the claim with the agency within two years after accrual of the claim and then to file a complaint in the District Court within six months after the agency denies the claim.").

As the R&R sets forth, Plaintiffs filed their administrative claim with DHHS almost two months after the two-year statute of limitations had expired. Accordingly, even if DHHS denies their claim, this Court will not have jurisdiction. Thus, after de novo review, the R&R is **ADOPTED** as to the Government's MTD (Dkt. No. 4). Plaintiff's Motion to Abate (Dkt. No. 8) is **DENIED**.

III. CONCLUSION

The Court **ADOPTS** the R&R (Docket No. 7). It is therefore ordered that "Plaintiffs' Objections to Magistrate Judge's Report and Recommendation" (Docket No. 8) are **OVERRULED**. Thus, the Government's Notice (Dkt. No. 3) and MTD (Dkt. No. 4) are **GRANTED**. The Clerk of the Court is **ORDERED** to close this case.

Signed on March 9, 2023.



Rolando Olvera
United States District Judge